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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,441	08/26/2003	Mark V. Vanderwalle	5490-000313	5180

7590 10/11/2006

Stephen J. Foss
Harness, Dickey & Pierce, P.L.C
P.O. Box 828
Bloomfield Hills, MI 48303

EXAMINER

WOODALL, NICHOLAS W

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,441

Applicant(s)

VANDERWALLE, MARK V.

Examiner

Nicholas Woodall

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. This office action is in response to applicant's amendment received on 08/24/2006.

Allowable Subject Matter

2. The indicated allowability of claim 18 is withdrawn in view of the newly discovered reference(s) to U et al. (International Publication WO 01/32068). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U et al. (International Publication WO 01/32068).

Regarding claim 24, U discloses a device that is capable of being used by a method comprising the steps of positioning a first implant relative to the selected bone portion in a primary procedure, passing a second implant relative to a selected portion of said first implant, providing a conduit through the second member to direct a flow of a flowable material through the second implant to assist in fixation of the second implant, flowing a flowable material through the second implant at a selected time to interconnect the second implant with the selected bone portion wherein the selected time is during a revision procedure. Regarding claim 19, U discloses a device capable

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of being used by a method comprising the steps discussed above wherein flowing a flowable material includes flowing a bone cement slurry through the second implant such that the bone cement slurry is able to cure to substantially interconnect the second implant and the selected bone portion. Regarding claim 20, U discloses a device capable of being used by a method comprising the steps discussed above wherein selecting the second implant to include a conduit, wherein the conduit defines at least a bore and an aperture, wherein flowing a flowable material includes flowing the flowable material through the bore and aperture, and wherein the flowable material is able to exit the second implant to substantially interconnect the second implant and the selected bone portion. Regarding claim 21, U discloses a device capable of being used by a method comprising the steps discussed above wherein interconnecting the second implant with the first implant to substantially hold the first implant relative to the second implant. Regarding claim 22, U discloses a device capable of being used by a method comprising the steps discussed above wherein interconnecting the first implant with the second implant includes threadably engaging the second implant with the first implant. Regarding claim 23, U discloses a device capable of being used by a method comprising the steps discussed above wherein passing the second implant includes at least one of sliding, driving, pushing, and combinations thereof. U discloses a device that delivers medical substances at any site in the body. U discloses the invention may be in the form of a plate, mesh, screw, tacks, spinal rods, and any combination thereof. (page 4 lines 14-24, page 5, and page 6 lines 1-17). The device delivers the medical substance in a time-released fashion and allows for the delivery of the medical

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substance after the primary procedure of inserting the device (page 9 lines 11-23). U further discloses the device can also be filled with a substance after installation by using a syringe or tubes (page 9 lines 1-7). As discussed above, U discloses a device capable of being used as a plate and screw combination to deliver a medical substance, such as bone cement, to a selected portion of bone after the primary procedure.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please reference PTO-892 for cited art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

nww


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER